place. It is interesting to observe that the House of Lords corrected an error which crept into the law through *Blackstone* that only in acts done in a public place could there be a conviction for affray.

Lord Gardiner L.C. delivered the main judgment with which the other eminent and learned members of the House of Lords concurred. After referring to the arguments of the parties and the earlier authorities on the subject of affray he stated at page 1134:—

"that it was not an ingredient of it that it should take place in a public place and that Blackstone fell into error and was followed by later authors and, erroneously, in the decisions relied upon by the appellant".

He went on to say that:—

"the essence of the offence is that two or more fight together to the terror of the Queen's subjects. Nowhere in the earlier writings is it suggested that the place where the fight occurs is a decisive matter".

Before he dismissed the appeal he concluded his judgment in these words:—

"The most powerful argument for the appellants is that afforded by the lapse of over a century since the error crept into the law. During that peroid one may assume that prosecutions and trials have been based on the hypothesis that only in respect of acts done in a public place can there be a conviction for affray. But no alteration of the surrounding law has been founded on that hypothesis, nor can it properly be regarded as an intentional development of the law of affray. The only result of it has been that during that period the citizen who has been the victim of affray in a private place has in practice been deprived of the protection of the law. That is not in itself any reason to continue the deprivation. Moreover, there is no argument of principle or logic to gild the error. In riot and assault, two kindred offences which legal writers have so often treated in association with affray, there is no requirement that they should be committed in a public place. To distinguish affray in this respect is captious and illogical. There seems, therefore, no adequate reason to perpetuate the error".

It is only right that the attention of the legislature should be drawn to our definition of "affray" which conflicts with the decision of the highest English authority. If such an error had also crept into our law then obviously step must be taken to remedy it.

I come now to the second ground of appeal. In *The Queen* v. *Wellard* [2] the prisoner was convicted of indecently exposing his person to some small girls in a place which was out of sight off a public footpath. The prisoner had gone to the place with several little girls though without legal right to go there. This was a place where persons were in the habit of going without having any strict legal right so to do and were never in any way hindered or interfered with. On a case stated his counsel submitted that the place was not a public place as the public had no right there and that a place was not public where the public had no right to be. It was held that the conviction was correct and the jury were justified in finding that the place was public. Lord Coleridge C.J. in his judgment in *Wellard's* case stated:—

"It is, I concede, difficult to define affirmatively what is a public place; this place, however, is clearly so. The public did undoubtedly have access to it. I am by no means sure that at common law the publicity of the place itself is an essential element in the offence, and I am not inclined now to say so: it is not necessary to decide this question. It is obvious that what is a public place may vary from time to time, and what we have to consider is, was this place at the time public?"

Grove J. in the same case stated:—

"A public place is one where the public go, no matter whether they have a right to go or not. The right is not the question. Many shows are exhibited to the public on private property, yet they are frequented by public — the public go there".

The meaning of public place, I think, depends to a great extent upon the context and upon the object of a particular Ordinance. A place may be a public place at one time and not at other times. Thus a railway carriage is a public place while being used for the reception and conveyance of passengers, but not while it lies empty in a siding. *Laugrish* v. *Archer.* [3] *Wellard's* case appears to be authority for saying that a public place would seem to include a place to which the public are accustomed to resort without being interfered with though there is no legal right to do so. *Button's* case would seem to suggest that a place could be a public place if at the time a substantial part of the public had access to it.

In my opinion the trial magistrate should have heard the evidence before making a decision. For reasons given I allow the appeal and order a new trial before another magistrate.

Appeal allowed. New trial ordered.

BERNARD LEOW KIM HOON v. MALAYAN AIRWAYS/QANTAS EMPIRE AIRWAYS LOCAL EMPLOYEES UNION & ORS.

[O.C.J. (Buttrose J.) August 10, 1966]

[Singapore — Civil Suit No. 589 of 1966]

Trade Union — Elections to executive committee — Executive committee elected by persons some of whom had no voting rights — Marked ballot papers — Whether elections valid.

The plaintiff sought a declaration that the purported election of the defendants 2 - 16 to the executive committee of the 1st defendant union was null and void and for consequential orders. Among the matters complained of was (a) that ballot papers were issued to members who had no voting rights; and (b) ballot papers were marked.

Held: (1) in accordance with the rules of the trade union only members who had paid their subscription and not let them fall into arrears for more than three months were entitled to vote and as in this case there was a considerable number of members in arrears of their subscription for more than three months who voted, the election could not be allowed to stand;

(2) there was evidence that some of the ballot papers were marked and this again made it improper for the election to be allowed to stand.

Cases referred to:—

(1) *Faramus* v. *Film Artistes' Association* [1963] 1 All E.R. 636.

(2) *Pender* v. *Lushington* (1877), 6 Ch. D. 70.

CIVIL SUIT.

J. B. Jeyaretnam for the plaintiff.

Lim Chor Pee for defendants 2 to 8 and 10 to 16.

Defendant No. 9 in person.

Cur. Adv. Vult.

Buttrose J.: In this action the plaintiff seeks:—

1. A declaration that the purported election of defendants Nos. 2 to 16 to the executive committee of the 1st defendant union, (hereinafter referred to as 'the union'), held on the 4th, 5th, 6th and 7th April, 1966, is null and void.

2. An order to restrain the 1st defendant from proceeding to hold its annual general meeting fixed for the 14th April, 1966, until after the trial of this action or further order.

3. An order to restrain the defendants Nos. 2 to 16 and each of them from taking office as the executive committee of the union by virtue of their purported election to office on the 7th April, 1966, and otherwise by themselves, their servants or agents from intermeddling in the union business or the management of its affairs.

4. An order that the 1st defendant do forthwith proceed to conduct a fresh election to its executive committee lawfully and in accordance with the rules of the union and with proper checks.

This matter originally came before me by way of motion on behalf of the plaintiff for an order that the interim injunction granted *ex parte* by Choor Singh J. on the 13th April, 1966, restraining:—

(a) the 1st defendant from proceeding to hold its annual general meeting fixed for the 14th April, 1966, until after the hearing of a motion returnable on Monday, the 18th April, 1966, until further order; and

(b) defendants Nos. 2 to 16 and each of them from taking office as members of the executive committee of the union by virtue of their purported election to office on the 7th day of April, 1966 and otherwise by themselves, their servants or agents from intermeddling in the union business or the management of its affairs until after the hearing of a motion returnable on Monday the 18th April, 1966, or until further order;

may be continued until after the trial of this action or until further order.

The motion came on for hearing on the 18th April, 1966. There was an application by both parties to cross-examine deponents on their affidavits and this was proceeded with, but not concluded when the court rose at the end of the day and the motion was adjourned for further hearing on a date to be fixed by the registrar.

At the resumed hearing on the 29th April, 1966, I was informed by counsel for both parties that it had been agreed to treat the motion as the trial of the action and that they proposed to call evidence for this purpose in the normal way.

I thereupon adjourned the hearing until the 3rd May, 1966, when the trial of the action proceeded.

It may be observed, in passing, that as the result of this course being taken there were no pleadings and no discovery both highly desirable and necessary in a case of this kind. The issues were never crystallized until all the evidence had been called and neither counsel saw it fit to open the case on behalf of their respective clients. To say the least of it, I consider this an unfortunate circumstance in a case of this magnitude and importance.

Be that as it may I turn now to deal with the matter as it was presented to me.

The plaintiff is a member of the union and so are the defendants Nos. 2 to 16. The 1st defendant is a registered trade union under The Trade Unions Ordinance (Cap. 154).

The defendants Nos. 2 to 16 were declared to have been elected to the executive committee of the union for the year 1966/67 at elections held therefor on the 4th, 5th, 6th and 7th April, 1966.

The plaintiff complains that these elections were not held in accordance with the rules of the union, nor with the procedure for the holding of the election notified to the members by the executive committee on the advice of the union's solicitors.

The matters of which the plaintiff complains may be summarised briefly as follows:—

1. Ballot papers were not distributed to all the members in breach of rule 19(c). Under this heading the plaintiff says that one person was refused a vote and other votes were improperly rejected. He further alleges that not enough publicity was given to the election.

2. Insufficient time was given to members within which to cast their votes in breach of rule 19(c)(iii).

3. Ballot papers were marked and therefore the election was void.

4. Ballot papers were distributed along with a list of certain of the candidates for election thereby rendering the election void.

5. Trustees were not elected along with the officials of the executive committee in breach of rules 11(c) and 17.

6. Ballot papers were issued to members who had no voting rights in breach of rules 7(a) and 6(c).

7. Ballot scrutineers were not properly appointed and their report was not properly given.

8. Ballot papers were tampered with and burnt and some were marked with a different ink. One of the ballot boxes had its seals broken and the lock fastening missing.

I propose to deal first of all with the complaint of tampering with the ballot papers as it

involves serious allegations of fraud against the defendants Nos. 2 to 16 which, if proved, would of course render the election null and void and dispose of the matter without more ado.

With regard to the ballot box found with its seals broken and the lock fastening missing, I am quite satisfied that it was an old one which was used in the previous election (the 1964/65 election) and had nothing whatever to do with the present election (the 1966/67 election). The plaintiff on being shown this box and seeing written on it "Election 1964-65 Secret Ballot No. 2" was prepared, as I understood him, to concede the possibility of his being mistaken in saying it was one that was used in this year's election. I think he was mistaken.

The evidence with regard to the finding of the burnt ballot papers can only be described as a bewildering maze of contradictions and confusion and I am unable to accept it. There are at least three different versions of the incident given by and on behalf of the plaintiff. Furthermore, on the probabilities of the matter alone I consider it in the highest degree unlikely that the defendants would select a spot in front of the union house in which to burn ballot papers, or to leave partially burnt ballot papers there lying about in a rubbish bin for all to see and anyone to find.

Again the finding of unburnt pieces of ballot papers with the date '1966' and the words 'ballot papers', *inter alia*, conveniently, if not miraculously, preserved intact although the rest of the ballot papers had been completely destroyed is more than just a coincidence. It is indeed, in my opinion, too good to be true.

With regard to the casting of votes on the same ballot paper in a different ink, I find this a more difficult matter to determine. It does constitute a very odd feature of the case and one which has caused me some concern. The evidence relating to the matter only came to light after the close of the plaintiff's case and during the cross-examination of the 3rd defendant. Possible explanations were proffered as to how this state of affairs could exist, none of which I found particularly convincing either way. In the absence of any further evidence on the subject I am not prepared to make a finding of fraud against the defendants. Fraud must not only be pleaded with the utmost particularity, but it must be clearly and distinctly proved. On this aspect of the case, therefore, I have come to the conclusion that the plaintiff has not discharged the onus or burden of proof which lies upon him of establishing fraud.

I come now to deal with the question as to whether ballot papers were issued to members who had no voting rights. In other words, were votes cast by members who were disqualified from voting. This important point turns on the construction of rule 7(a) and rule 6(c) in the context of the rules taken as a whole.

Rule 7(a) reads as follows:—

> "Only members who are 21 years of age and over shall be eligible for appointments as internal auditors and for nomination and election to any offices in the executive committee, and trustees of this union. All members shall have the right to vote at any meeting except those disqualified by arrears in rule 6(c)."

Rule 6(c) reads as follows:—

> "Any member whose monthly subscription or levy is more than three months in arrears shall not be entitled to any union benefit."

Furthermore, it is to be noted that under rule 6(d) any member who allows his arrears to exceed six months renders himself liable to be struck off the list of membership and shall then forfeit all his interests in the union.

It is provided by rule 9(b) that the quorum for an annual general meeting shall not be less than 150 of the ordinary members who are not disqualified under rule 6(c) above and similarly with regard to an extraordinary general meeting under rule 12(c).

Rule 13 provides that only ordinary members who have fully paid up subscriptions and contributions owing to the union may stand for election to office. Finally reference must be had to the Ballot Rule, rule 19(c)(i) of which provides as follows:—

> "(c) The executive committee shall take such steps to see that the following procedures governing secret ballot are complied with:—
>
> (i) That each member entitled to vote is issued with a ballot paper together with an envelope addressed to the general secretary for the return of the ballot paper."

The important words are "that each member entitled to vote is issued with a ballot paper."

Taking these provisions as a whole it seems to me clear that not only do they stress the importance of the fact, but are expressly designed to ensure that before a member can take any active part in union activities or enjoy any of its benefits he must be solvent in the sense that he must pay his subscriptions and never let them fall into arrear for more than three months. The only reasonable construction that I am able to place on these rules is that any member whose monthly subscription or levy is more than three months in arrear is not entitled to vote and is disqualified from doing so.

It is not in dispute that a considerable body of the members who voted were in arrear with their subscriptions for more than three months and in quite a number of instances since June and July of last year. The net result of this situation, therefore, is that the present committee were elected by votes cast by a large number of members who were disqualified from voting and

the election, in my judgment, cannot be allowed to stand.

This is sufficient to dispose of the case in the plaintiff's favour but in deference to the arguments addressed to me I propose to express my views briefly on the other points raised.

Before leaving this aspect of the case, however, I think I should say that I appreciate the dilemma which the defendants found themseives faced with in this matter. It was their desire to give everyone an opportunity to cast his vote, if only to stifle any outcry by the members that might arise if they were debarred or prevented from doing so and not with any deliberate intention of flouting the express provisions laid down in the rules of the union.

However, in my opinion, this is what they have done and while I can sympathise with them in their predicament I cannot condone or excuse their action.

As was pointed out by Diplock L.J. in *Faramus* v. *Film Artistes' Association* [1] at page 652 the rules of a trade union are the terms of a contract of association between the members of the union.

A rule as to the eligibility to vote is a term of the contract of association whereby the members authorise the persons appointed pursuant to the contract of association as their agents (in this case the executive committee) to ensure that only those members shall vote who fulfil the specified requirements as to eligibility so to do.

Voting rights of members and election procedure are important matters, which should be provided for in rules and the courts will protect such rights. See *Pender* v. *Lushington.*[2]

It is essential that the executive committee of any union should comprise men of integrity and intelligence commanding the respect of all the members. They must be capable of exercising firm discipline and tight control, both with regard to the administration of the affairs of the union and in the application and observance of its rules.

If at any time they should find themselves in doubt or difficulty over any matter they should seek competent legal advice and, in addition, I have no doubt that the registrar of trade unions, if his aid is sought, will be only too ready to assist by placing the benefit of his advice and experience at their disposal.

Oddly enough the executive committee in this case did both these things but unfortunately for them only at the 11th hour. The issue on which I have decided this case *viz.*, the eligibility to vote, was never raised with their solicitors or with the registrar of trade unions nor was their attention ever drawn to this point. In fairness to the union's solicitors, however, I think I should point out that in advising the union of the procedure it should adopt the solicitors did state that they thought it was perfectly fair to all candidates and members who were eligible to vote.

The 3rd defendant, who was at the material time the general secretary of the union, frankly admitted that time was short and things had to be done in a hurry with the result that certain matters were left undone which should have been done.

I am not unmindful, in saying what I have, that the court will not interfere if there is a mere irregularity of procedure in convening a meeting where there is no wrong done as a matter of substance, nor where negligence (as opposed to fraud or an *ultra vires* act) is alleged against the executive. But that, for the reasons I have given, is not this case.,

I turn now to deal with the other points raised.

Ballot scrutineers were neither properly appointed nor was their report properly certified. Rule 10(d) provides that the business of the annual general meeting is to receive the ballot scrutineers' report on the ballot taken for the election of office bearers of the executive committee and trustees. Rule 19(c)(iv) also provides that the executive committee shall take such steps to see that the counting of votes is witnessed, checked and certified by at least two ballot scrutineers at a meeting convened for the purpose. In this case one scrutineer appears to have appointed the second one himself while the report, if such it can be called, was only signed by one of them.

Again, in my view, it is improper to distribute along with the ballot papers a list containing the names of some of the candidates seeking election. There was evidence that this was done and I have come to the conclusion, in some instances that it undoubtedly was.

There was evidence that some of the ballot papers were marked, as indeed they were, but it was suggested, as I understood it, that this could have been done after the election was over. It is difficult to see what possible motive or reason there could be for doing so or what useful purpose it would serve. The evidence of the chief scrutineer, Kurian, was that he rejected every ballot paper that bore any sort of mark or initial yet quite a number of ballot papers accepted would appear to have borne such markings. The evidence on the subject is inconclusive and unsatisfactory but coupled with the question of the casting of votes on the same ballot paper in a different ink, to which I have already referred, gives rise to a certain anxiety of mind, a feeling of unease, that all was not as it should

be. It is possible, I suppose, that the plaintiff and his faction may have done this in an attempt to spike this, as they describe it, undemocratic election. On the other hand it is possible that the defendants may have been responsible for doing so in order to spoil a ballot paper cast in favour of the plaintiff and his candidates.

Be that as it may it represents yet again another unsatisfactory feature of this election and taken in conjunction with the other matters to which I have referred renders it, not only unsafe, but improper for this election to be allowed to stand.

There is no substance, in my opinion, in the other matters raised by the plaintiff. The time allowed for the casting of votes was, I consider, sufficient and reasonable. I am satisfied that sufficient publicity was given to the holding of this election.

Proper and adequate steps were taken, in my view, to ensure the distribution of ballot papers to all the members. Two members were called who said they were not given a ballot paper but it transpired that one was eight months in arrear with his subscription while the other was eleven months and accordingly neither of them was entitled to vote. It is true that a number of members who were more than three months in arrear with their subscriptions were given ballot papers but that cannot avail the plaintiff now.

He cannot on the one hand seek to set aside this election on the ground that votes were cast by members who were disqualified from voting and then on the other hand be heard to complain that those who were disqualified did not receive a ballot paper and were thereby refused a vote. The plaintiff cannot approbate and reprobate.

The question of the election of trustees, submission of the annual report and statement of accounts to members and failure to place a copy of the external and internal auditors' report in the office of the union are matters for the annual general meeting to consider if and when it is next held. It would at this stage, in my view, be premature for this court to deal with the matter.

In the result therefore, for the reasons I have given, the plaintiff is entitled to judgment.

There will be a declaration that the election is null and void and an order restraining defendants Nos. 2 to 16 and each of them from taking office as the executive committee of the union or from intermeddling in the business of the union or the management of its affairs.

There will also be an order that the 1st defendant proceeds with reasonable despatch to conduct a fresh election to its executive committee in accordance with the rules of the union.

There will be no order as to costs against the 1st and 9th defendants.

Defendants Nos. 2 to 8 and 10 to 16 must pay the plaintiff's costs limited to one half only of his taxed bill.

Order accordingly.

Solicitors: *Donaldson & Burkinshaw; Chor Pee & Hin Hiong.*

MENON v. DITT SINGH

[O.C.J. (MacIntyre J.) August 10, 1966]

[Ipoh — Civil Suit No. 491 of 1964]

Practice and Procedure — Payment into and out of court — Costs — R.S.C., 1957, O. 22 & O. 65.

The defendant had paid a sum in full settlement of the plaintiff's claim into court under O. 22, r. 1(1). The plaintiff instead of applying for payment out within fourteen days of the service of the notice, applied to court for payment out under O. 22, r. 2(3). The defendant consented to the order for payment out, but objected to an order for costs.

Held: the court had a discretion to order costs and in this case the general rule in regard to costs in proceedings of this nature is that the plaintiff is entitled to costs up to the date of payment in and the defendant the costs after that date will be followed.

CIVIL SUIT.

P. P. Dharmananda for the plaintiff.

N. Sharma for the defendant.

Cur. Adv. Vult.

MacIntyre J.: The defendant in this suit paid into court by virtue of Order 22 rule 1(1) of the Rules of the Supreme Court a sum of $2,625 in full settlement of the plaintiff's claim. Notice of payment in as required by the rule was given to the plaintiff but he instead of applying for payment out within 14 days of the service of the notice, in which event he could have obtained the money without recourse to an order of court and would have been entitled, as a matter of course, to tax his bill of cost, chose to make the application for payment out under Order 22 rule 2(3).

Mr. Sharma for the defendant, while consenting to an order for payment out under rule 3, objected to an order for costs. He submitted, that the power of the court under rule 3 is strictly limited to granting or refusing an order for payment out in full satisfaction of the plaintiff's claim in the suit and did not extend to include the exercise of the court's discretionary powers to grant costs under Order 65 rule 1. In this connection he argued that the word "claim" mentioned in rule 3 refers to the object of the claim in the suit and not to the prayer for costs which is only incidental to the claim and contended that the ommission to provide for the